

Interstate Commerce Commission
Washington, D.C.

11407
RECORDATION NO. Filed 1425

JAN 22 1980 - 10 40 AM

Gentlemen:

INTERSTATE COMMERCE COMMISSION

Enclosed for recordation under the provisions of 49 USC 11303 (formerly Section 20(c) of the Interstate Commerce Act), as amended, are the original and six counterparts of an Equipment Lease dated as of January 15, 1980.

A general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Lessor under Equipment Lease:	Cargill Leasing Corporation Box 9300 Minneapolis, Minnesota 55440
Lessee under Equipment Lease:	Burlington Northern Inc. 175 East Fifth Street St. Paul, Minnesota 55101

The undersigned is the Lessor under the Equipment Lease and has knowledge of the matters set forth therein.

Please return the original and five copies of the Equipment Lease to Michael G. McGee, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering the required filing fee.

Very truly yours,

CARGILL LEASING CORPORATION

By Hugh B. Gail
Its Executive Vice President

Enclosures

0-022A025

JAN 22 1980
Date
Fee \$ 50.00

ICB Washington, D. C.

C. T. Kappeler
Chapman and Cutler

SCHEDULE A

DESCRIPTION OF EQUIPMENT

<u>Number of Items</u>	<u>Description</u>	<u>Debtor identifying Mark and Numbers</u>
109	Semi-enclosed, bi-level auto racks without roof or end doors	BN 7072-7180, both inclusive
41	Enclosed tri-level auto racks without end doors	BN 4836-4876, both inclusive

Interstate Commerce Commission
Washington, D.C. 20423

1/22/80

OFFICE OF THE SECRETARY

Michael G. McGee
Chapman & Cutler
111 West Monroe Street
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/22/80 at 10:50am, and assigned re-recording number(s). 11407 & 11408

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

11497

RECORDATION NO. Filed 1425

JAN 22 1980 - 10 50 AM

... COMMERCE COMMISSION

EQUIPMENT LEASE

Dated as of January 15, 1980

Between

CARGILL LEASING CORPORATION

Lessor

And

BURLINGTON NORTHERN INC.

Lessee

(Burlington Northern No. 80-1)

(150 Auto Racks)

This Lease and certain of the sums due and to become due hereunder have been assigned to, and are subject to a security interest in favor of, Mercantile-Safe Deposit and Trust Company, as Security Trustee, pursuant to a Security Agreement-Trust Deed dated as of January 15, 1980 from Cargill Leasing Corporation to said Security Trustee. Information concerning such security interest may be obtained from said Security Trustee at its principal office at Two Hopkins Plaza, Baltimore, Maryland 21203, Attention: Corporate Trust Department.

TABLE OF CONTENTS

<u>Section</u>	<u>Heading</u>	<u>Page</u>
Parties		1
1. LEASE AND DELIVERY OF EQUIPMENT		1
1.1. Intent to Lease and Hire		1
1.2. Inspection and Acceptance		1
1.3. Certificate of Acceptance		1
2. RENTALS AND PAYMENT DATES		2
2.1. Rent for Equipment		2
2.2. Rent Payment Dates		2
2.3. Adjustment of Rentals		2
2.4. Place and Manner of Rent Payment		3
2.5. Net Lease		4
3. TERM OF THE LEASE		5
4. OWNERSHIP and MARKING OF EQUIPMENT		5
4.1. Retention of Title		5
4.2. Duty to Number and Mark Equipment		5
4.3. Prohibition Against Certain Designations		5
5. DISCLAIMER OF WARRANTIES		5
6. LESSEE'S INDEMNITY		6
6.1. Scope of Indemnity		6
6.2. Continuation of Indemnities and Assumptions		6
7. RULES, LAWS AND REGULATIONS		7
8. USE AND MAINTENANCE OF EQUIPMENT		7
9. LIENS ON THE EQUIPMENT		7
10. FILING; PAYMENT OF STATE AND LOCAL TAXES		8
10.1. Filing		8
10.2. Payment of Non-Income Taxes		8
11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE		9
11.1. Insurance		9
11.2. Duty of Lessee to Notify Lessor		10
11.3. Sum Payable for Casualty Loss		10
11.4. Rent Termination		10
11.5. Disposition of Equipment		10
11.6. Casualty Value		10
11.7. Risk of Loss		11
11.8. Eminent Domain		11
12. ANNUAL REPORTS		11
12.1. Duty of Lessee to Furnish		11
12.2. Lessor's Inspection Rights		11

<u>Section</u>	<u>Heading</u>	<u>Page</u>
13.	RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.....	11
14.	DEFAULT	12
14.1.	Events of Default.....	12
14.2.	Remedies	13
14.3.	Cumulative Remedies	14
14.4.	Lessor's Failure to Exercise Rights	14
14.5.	Notice of Event of Default.....	14
15.	RETURN OF EQUIPMENT UPON DEFAULT	14
15.1.	Lessee's Duty to Return	14
15.2.	Specific Performance	15
15.3.	Lessor Appointed Lessee's Agent	15
16.	ASSIGNMENTS BY LESSOR	15
17.	ASSIGNMENTS BY LESSEE; USE AND POSSESSION.....	16
17.1.	Lessee's Rights to the Equipment.....	16
17.2.	Use and Possession on Lines Other Than Lessee's Own	16
17.3.	Merger, Consolidation or Acquisition of Lessee	16
18.	RENEWAL OPTIONS AND RIGHT OF FIRST REFUSAL.....	17
18.1.	Renewal Options	17
18.2.	Right of First Refusal.....	17
18.3.	Delivery of Equipment	17
18.4.	Determination of Fair Market Value or Fair Rental Value	17
19.	INTEREST ON OVERDUE RENTALS AND AMOUNT PAID BY LESSOR	18
20.	INCOME TAX INDEMNIFICATION	18
21.	MISCELLANEOUS	22
21.1.	Notices	22
21.2.	Right of Lessor to Perform	23
21.3.	Execution in Counterparts	23
21.4.	Law Governing.....	23
21.5.	Headings and Table of Contents.....	23
21.6.	Severability	23

Attachments to Equipment Lease:

Schedule A—DESCRIPTION OF ITEMS OF EQUIPMENT

Schedule B—CERTIFICATE OF ACCEPTANCE

Schedule C—SCHEDULE OF CASUALTY VALUE

EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of January 15, 1980 is between CARGILL LEASING CORPORATION, a Delaware corporation (the "Lessor") and BURLINGTON NORTHERN INC., a Delaware corporation (the "Lessee").

R E C I T A L S:

A. Pursuant to a Purchase Order Assignment dated as of January 15, 1980, the Lessee has assigned to the Lessor its right to purchase the Equipment referred to below.

B. The Lessee and the Lessor intend to enter into a Participation Agreement dated as of January 15, 1980 (the "Participation Agreement") with Mercantile-Safe Deposit and Trust Company, as security trustee (the "Security Trustee") and Aetna Life Insurance Company (for the account of certain of its separate accounts) (the "Note Purchaser") providing for the commitment of the Lessor to acquire the Equipment (collectively the "Equipment" and individually an "Item" or "Item of Equipment") described in Schedule A hereto and made a part hereof. Under the Participation Agreement, the Note Purchaser will commit to purchase 11.75% Secured Notes (the "Notes") of the Lessor in an amount equal to 70.3071369% of the Purchase Price (as defined therein) of each Item of Equipment. It is contemplated that the Participation Agreement will provide that the Notes will be secured by an assignment of the Lessor's right, title and interest in and to this Lease and in and to the Equipment pursuant to a Security Agreement-Trust Deed dated as of January 15, 1980 (the "Security Agreement") from the Lessor to the Security Trustee.

SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1. Intent to Lease and Hire. Upon delivery of each Item of Equipment by the manufacturer thereof identified in Schedule A hereto (hereinafter referred to as the "Manufacturer"), the Lessee shall lease and let such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

1.2. Inspection and Acceptance. The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A hereto. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and the Manufacturer a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Schedule B with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after the Outside Delivery Date therefor in said Schedule A.

1.3. Certificate of Acceptance. The Lessee's execution and delivery of a Certificate of Acceptance with respect to each Item of Equipment pursuant to Section 1.2 hereof shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturer, such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the character of the Equipment as of the date of this Lease. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rent for Equipment. The Lessee agrees to pay the Lessor the following rent for each Item of Equipment:

(a) *Interim Rental.* For each Item of Equipment, an amount per day (the "Interim Rental") equal to .0229475% of the Purchase Price thereof for the period, if any, from and including the Closing Date for such Item of Equipment to, but not including January 3, 1981 (the "Term Lease Commencement Date"); and

(b) *Fixed Rental.* (i) For each Item of Equipment, eighteen consecutive semiannual installments of fixed rental, payable in arrears, each in an amount equal to 6.43251% of the Purchase Price thereof; and

(ii) The fixed rentals provided for in Section 2.1(b)(i) are hereinafter sometimes referred to as "Fixed Rentals".

2.2. Rent Payment Dates. The installment of Interim Rental for each Item of Equipment shall be due and payable on the Term Lease Commencement Date. The first installment of Fixed Rental for each Item of Equipment shall be due and payable six months following the Term Lease Commencement Date and the balance of said installments shall be payable at six month intervals thereafter with the final such installment payable nine years following the Term Lease Commencement Date. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Minnesota or Maryland are authorized or required to close.

2.3. Adjustment of Rentals. (a) In determining the amount of each installment of Fixed Rental payable pursuant to Section 2.1(b) hereof, the Lessor and the Lessee have assumed that on each Closing Date, the Note Purchaser will purchase the principal amount of the Notes contemplated to be purchased thereby in the Participation Agreement so that, pursuant to Section 2.5 of the Participation Agreement the Lessor will not be required to issue to a substitute investor Notes at a rate higher than 11.75% per annum, nor will the Lessor be required to pay the entire amount of the Purchase Price of the Items of Equipment (as defined in the Participation Agreement) which were to have been settled for on such Closing Date. In the event that pursuant to Section 2.5 of the Participation Agreement, the Note Purchaser shall fail to purchase the Notes to be issued on a Closing Date and the Lessor shall either be required to issue Notes at a rate in excess of 11.75% per annum or the Lessor shall thereby be required to pay the entire amount of the Purchase Price of the Items of Equipment which were to have been settled for on such Closing Date in the manner provided in said Section 2.5, then the Lessee and the Lessor agree that the Fixed Rental shall be increased to an amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Lessor in originally evaluating this transaction) to equal the after-tax economic and accounting yields and cash flows that would have been realized by the Lessor if the Note Purchaser had purchased the Notes on such Closing Date as so contemplated, and the Casualty Values (as defined in Section 11.6 hereof) shall similarly be adjusted in amounts reasonably determined by the Lessor.

(b) In the event that (i) the sum of all expenses paid by the Lessor pursuant to Section 2.6(a) and 2.6(b) of the Participation Agreement exceeds \$35,000, or (ii) the sum of all expenses paid by the Lessor pursuant to Section 2.6(c) of the Participation Agreement exceeds three-eighths of one per cent of the aggregate principal amount of the Notes issued under the Security Agreement, or (iii) the Closing Dates under the Participation Agreement occur on dates or require the purchase of Notes by the Note Purchaser in amounts other than as expressed in Section 2.3 of the Participation Agreement to be contemplated by the parties thereto, or (iv) less than 109 bi-level auto racks Items of Equipment are delivered to and accepted by the Lessee under the Lease on or prior to May 31, 1980, or (v) less than

41 tri-level auto racks Items of Equipment are delivered to and accepted by the Lessee under the Lease after May 31, 1980 (but no such delivery and acceptance may take place after December 31, 1980, or (vi) an amendment to the tax law shall be enacted and become effective prior to the date of delivery and acceptance of the first Item of Equipment hereunder which alters or eliminates any of the Tax Benefits (as defined in Section 20(a) hereof) or the applicable rate of taxation of income under the Code or under Minnesota law, then the Lessee and the Lessor agree that the Fixed Rentals shall be adjusted to such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Lessor in originally evaluating this transaction) to equal the after-tax economic and accounting yields and cash flows that would have been realized by the Lessor if none of the conditions specified in clauses (i) through (vi) had not occurred, and the Casualty Values shall similarly be adjusted in amounts reasonably determined by the Lessor.

(c) Anything in Section 2.3(a) or 2.3(b) hereof to the contrary notwithstanding, the amounts payable as installments of Fixed Rental and Casualty Values hereunder with respect to any Item of Equipment (i) shall in no event be reduced below amounts necessary to discharge that portion of the principal of and/or interest on the Notes due and payable on each rent payment date under this Lease, and (ii) shall comply with the guidelines for Internal Revenue Service rulings on leveraged leases set forth in Revenue Procedures 75-21 and 75-28.

2.4. Place and Manner of Rent Payment. The payments to be made by the Lessee under this Lease shall be made as follows:

(a) The installment of Interim Rental shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address thereof provided for payments in Section 21.1 hereof; provided that in the event either the Lessor, the Note Purchaser or the Security Trustee shall notify the Lessee in writing, with a copy of said notice sent to the Lessor, that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(b) The portion of any installment of Fixed Rental resulting from an increase in the amount thereof pursuant to Section 2.3 hereof shall be paid in full to the Lessor by wire transfer to the principal office of the Lessor at the address provided for payments in Section 21.1 hereof;

(c) Each installment of Fixed Rental shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address thereof provided for payments in Section 21.1 hereof; provided that in the event either the Lessor, the Note Purchaser or the Security Trustee shall notify the Lessee in writing, with a copy of said notice sent to the Lessor, that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee; and provided further that in the event such notice shall direct the Lessee to divide such installment into not more than two portions, in addition to the portion referred to in Section 2.4(b) hereof, and to pay each portion by wire transfer separately to not more than two parties, the Lessee agrees to do so;

(d) The entire amount of any payment of Casualty Value pursuant to Section 11 hereof shall be paid to the Lessor by a check drawn on a bank located in the continental United States (identifying the same as a payment of Casualty Value relating to Burlington Northern No. 80-1) and forwarded to the Lessor in the manner provided for notice in Section 21.1 hereof; provided that in the event either the Lessor, the Note Purchaser or the Security Trustee shall notify the Lessee in writing, with a copy of said notice sent to the Lessor, that the right to receive payment of such Casualty Value shall have been assigned in accordance with Section 16 hereof, the Lessee

shall make such payment by such check in the manner designated in such notice or as otherwise designated from time to time in writing by such notifying party;

(e) The amount of any payment owing to the Lessor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance) and 21.2 hereof shall be made directly to the Lessor without regard to the assignment of this Lease pursuant to Section 16 hereof;

(f) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount;

(g) All payments pursuant to Section 20 hereof shall be paid to the Lessor, provided that in the event the Lessor, the Note Purchaser or the Security Trustee shall notify the Lessee in writing, with a copy of said notice sent to the Lessor, that right to receive payment of such payment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such notifying party; and

(h) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Lessor or its assignee, in which case the Lessee shall reimburse the Lessor or its assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make payments due hereunder by wire transfer where specified above at the opening of business on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made, and where not so specified, such payment shall be made by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been previously advised in writing.

2.5. Net Lease. This Lease is a net lease and the Lessee's obligation to pay all Interim Rental and Fixed Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 16 hereof for any reason whatsoever.

SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate nine years following the Term Lease Commencement Date provided for in Section 2.1(a) hereof.

SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1. Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by the Lessee.

4.2. Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with its rack identifying number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased and Subject to a Security Interest recorded with the I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the rack identifying number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new rack identifying numbers to be substituted therefor, which consent and statement previously shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSEE LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY THE LESSOR, AND THE LESSOR AND ANY ASSIGNEE THEREOF PURSUANT TO SECTION 16 HEREOF EXPRESSLY DISCLAIM ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (D) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the

account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer, provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment.

SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor, the Note Purchaser and the Security Trustee and their respective successors and assigns from and against:

(a) any and all loss or damage to the Equipment, usual wear and tear excepted; and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to any Item of Equipment or any part thereof, including, without limitation, the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Item of Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessee or any indemnified party), (ii) by reason or as the result of any act or omission (whether negligent or otherwise) of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent, trademark or copyright infringements, or (iv) as a result of claims for negligence or strict liability in tort.

The indemnities and assumptions of liabilities set forth in this Section 6.1 do not guarantee a residual value in the Equipment nor do they guarantee the payment of the Notes or any interest accrued thereon.

In the event that the Lessee is required to make any payment under this Section 6 the Lessee shall pay such indemnified person an amount which, after deduction of all taxes required to be paid by such indemnified person in respect of the receipt thereof under the laws of the United States or any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deduction, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes as determined in the sole discretion of the indemnified person), shall be equal to the amount of such payment.

6.2. Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) with respect to the use and maintenance of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor. In the event the Lessee shall be required to make any alteration, replacement, addition or modification to any Item of Equipment (the "Alterations") in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such Alterations at its own expense and title thereto shall be immediately vested in the Lessor. The Lessee agrees that, within 30 days after the close of any calendar quarter in which the Lessee has made Alterations, the Lessee will give written notice thereof to the Lessor describing, in reasonable detail, the Alterations and specifying the cost thereof with respect to each Item of Equipment and the date or dates when made.

SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify any Item of Equipment without the prior written authority and approval of the Lessor and any assignee pursuant to Section 16 hereof which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the security interest or other rights of any assignee under Section 16 hereof in and to the Equipment. The Lessee's obligations under this Section 9 shall survive the termination of this Lease.

Without limiting the foregoing, the Lessee further agrees that it will keep each Item of Equipment free and clear of any liens, charges, encumbrances or claims of the owner or owners of any interest in any units of railroad rolling stock to which any such Item of Equipment is at any time attached

or affixed and of any purchasers of or present or future creditors obtaining a lien on such unit or units of rolling stock, and the Lessee will permit an Item of Equipment to be attached or affixed to a unit of rolling stock only in a manner so as to permit such Item to be readily removable from such unit of rolling stock without material damage to such Item or to such unit of rolling stock and without diminishing or impairing the value or utility of such Item or the value or utility such unit of rolling stock would have had at such time had such item not been so attached or affixed.

SECTION 10. FILING; PAYMENT OF STATE AND LOCAL TAXES.

10.1. Filing. Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease and the Security Agreement (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) to be duly filed, recorded or deposited in such public offices within or without the United States as the Lessor or any assignee under Section 16 hereof, may reasonably request for the protection of Lessor's title or the security interest of such assignee to the satisfaction of the Lessor's or such assignee's counsel and will furnish the Lessor and such assignee proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or such assignee, for the purpose of protecting the Lessor's title to, or such assignee's security interest in, any Item of Equipment to the satisfaction of the Lessor's or such assignee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor and such assignee proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action.

10.2. Payment of Non-Income Taxes. All payments to be made by the Lessee hereunder will be free of expenses to the Lessor, the Note Purchaser, the Security Trustee or any other assignee under Section 16 hereof (the "Indemnitees"), for collection or other charges and will be free of expense to the Indemnitees with respect to the amount of any local, state, federal or foreign taxes (excluding, however, (a) taxes which are imposed by any federal, state or local government or tax authority in the United States on or measured by the net or gross income of any Indemnatee, but not excluding franchise taxes, gross receipts taxes or such taxes and charges imposed by a State other than the State of Minnesota or any political subdivision of the State of Minnesota which are imposed in lieu of taxes on or measured by the gross income or gross receipts of any Indemnatee, provided, however, to the extent any Indemnatee utilizes any franchise or gross receipt tax paid by the Lessee to such taxing authority on behalf of such Indemnatee [or which was paid by the Lessee to such Indemnatee as reimbursement for such tax], as a credit against its State of Minnesota income tax, such Indemnatee shall promptly refund to the Lessee an amount equal to the reduction in its State of Minnesota income tax resulting from the utilization of such credit, or (b) taxes which are imposed by any taxing authority or governmental subdivision of a foreign country to the extent any Indemnatee is entitled to a credit therefor against its United States Federal income taxes [provided that taxes of any foreign country or subdivision thereof incurred as a result of the Indemnatee being taxed by such foreign country or such subdivision on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the Indemnatee is entitled to a credit against its United States Federal income taxes], or (c) any tax imposed as a direct result of a voluntary transfer or other voluntary disposition by any Indemnatee, or any transfer or disposition by any Indemnatee resulting from the bankruptcy or other proceeding for the relief of debtors in which such Indemnatee is the debtor, whether voluntary or involuntary, of any interest in any Item of Equipment or interest in rentals under this Lease), assessments or license certification or registration fees and any charges, fines or penalties in connection therewith (hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery

or transfer of title under the terms hereof or the Security Agreement, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon any Indemnatee solely by reason of its interest with respect thereto and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the interest of any Indemnatee or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the non-payment thereof does not, in the advance opinion of any Indemnatee, adversely affect the title, property or rights of any Indemnatee. If any Impositions shall have been charged or levied against any Indemnatee directly and paid by such Indemnatee, the Lessee shall reimburse such Indemnatee on presentation of an invoice therefor. Prior to making such payment, such Indemnatee shall promptly notify the Lessee of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either make such reports in such manner as to show the interests of each Indemnatee in such Items of Equipment or notify each Indemnatee of such requirement and make such reports in such manner as shall be satisfactory to such Indemnatee.

In the event that, during the continuance of this Lease, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1. Insurance. The Lessee covenants and agrees that it will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained for each Item of Equipment from time to time subject to this Lease, property and public liability insurance in such amounts and against such risks and with such insurers as shall be satisfactory to the Lessor and any assignee under Section 16 hereof; *provided*, that, in the case of property insurance, the Lessee will be permitted to self-insure to the extent it self-insures equipment similar in nature to the Equipment which it owns or leases, but in any event the Lessee shall maintain in effect such property insurance as is required by prudent industry practice in respect of equipment similar in nature to the Equipment. All such property insurance policies shall provide that the Lessor and the Lessee shall be named assureds and that losses shall be adjusted with the Lessee and that the proceeds thereof shall be payable to the Lessor and the Lessee as their interests shall appear; provided that so long as the principal of or interest on any Note shall remain unpaid, such policies shall provide that the losses, if any, shall be payable to any assignee under Section 16 hereof under a standard mortgage loss payable clause satisfactory to the Lessor and such assignee as their interests may appear. All proceeds of insurance received by the Lessor and such assignee with respect to any Items of Equipment not suffering a Casualty Occurrence (as hereinafter defined) shall be paid to the Lessee upon proof satisfactory to the Lessor and such assignee that any damage to any Item with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by the Lessor and such assignee with respect to a Casualty Occurrence shall be credited toward the payment required by this Section 11 with respect to such Casualty Occurrence.

The Lessee covenants and agrees that it will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained public liability insurance in amounts and against risks required by prudent industry practice in respect of equipment similar in nature to the Equipment and

in any event comparable to insurance maintained by the Lessee in respect of equipment which it owns or leases which is similar in nature to the Equipment. The Lessee represents and warrants that, as of the date of execution of this Lease, it maintains in effect excess public liability insurance with respect to its operations (including the Equipment) against damages because of bodily injury, including death, or damage to the property of others. The Lessee represents and agrees that all policies of insurance carried pursuant to the first sentence of this paragraph will name the Lessor, the Lessee and any assignee under Section 16 hereof as assureds.

All policies of insurance to be carried pursuant to this Section 11.1 shall provide that the same shall not be cancelled or materially changed without at least 30 days' prior written notice to each insured named therein. No such policy shall provide that the coverage thereunder for the benefit of the Lessor or any assignee under Section 16 hereof shall be restricted, impaired or invalidated by any breach or violation by the Lessee of warranties, declarations or conditions contained in such policies and the Lessee shall, upon the request of the Lessor or such assignee (but not more frequently than annually), furnish either a certificate of the insurer to such effect or a certificate of an officer of the Lessee or an opinion of counsel of the Lessee that no such policy contains such provisions. The Lessee covenants and agrees that it will throughout the term hereof furnish to the Lessor and such assignee certificates of insurers or other satisfactory evidence of the maintenance of the insurance required by this Section 11.1

11.2. Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged during the term of this Lease or thereafter while such Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease for a stated period which exceeds the then remaining term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and any assignee thereof pursuant to Section 16 hereof in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms of Section 11.3 hereof.

11.3. Sum Payable for Casualty Loss. The Lessee, on the next succeeding rent payment date following notice of a Casualty Occurrence with respect to any Item or Items of Equipment, shall pay to the Lessor the Interim or Fixed Rental installment due on such payment date for such Item of Equipment plus any rentals or other sums due on or prior to such date then remaining unpaid plus a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

11.4. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. Disposition of Equipment. The Lessee shall as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, the Lessee may, to the extent the Casualty Value with respect thereto has been paid, retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor.

11.6. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Purchase Price (as defined in the

Participation Agreement) of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.7. Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8. Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before the first May 1 which occurs more than four months following the date of this Lease and each May 1 thereafter, the Lessee will furnish to the Lessor, the Note Purchaser, the Security Trustee and any other assignee pursuant to Section 16 hereof an accurate statement as of the preceding December 31 (a) showing the amount, description and rack numbers of the Items of Equipment then leased hereunder, and the amount, description and road numbers of the units of railroad rolling stock to which such Items are attached, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2. Lessor's Inspection Rights. The Lessor, the Note Purchaser, the Security Trustee and any other assignee pursuant to Section 16 hereof each shall have the right, at their respective sole cost and expense, by their respective authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease.

SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease or any renewal thereof with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, remove from any unit of railroad rolling stock to which such Item of Equipment is attached and deliver possession of such Item of Equipment to the Lessor at such reasonable storage place on the lines of railroad operated by the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment at such place for a period not exceeding 90 days, which period shall begin when 90% of the Items then subject to this Lease will have been delivered to the point of storage, and transport the same at any time within such 90-day period to any

reasonable place on any railroad lines operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee; provided that the obligation of the Lessee to so transport shall be limited to only one such movement in respect of any such Item of Equipment. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Item, to inspect the same; provided, however, that the Lessee shall be liable for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence, except in the case of negligence of the Lessor or any prospective purchaser or lessee of any Item or any of its employees or agents. During any such storage period the Lessee shall maintain insurance of the scope and nature required by Section 11.1 hereof and maintain the Items of Equipment in such manner as the Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances. All amounts earned in respect of the Equipment [after the date of expiration of this Lease, but not exceeding the rental, per diem, or other similar charge for equipment] received therefor, shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the expiration of this Lease, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

SECTION 14. DEFAULT.

14.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

- (a) Default shall be made in the payment of any part of the rental or Casualty Value provided in Section 2 or 11 hereof and such default shall continue for ten days;
- (b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof;
- (c) The Lessee shall at any time fail to maintain insurance in the manner required by Section 11.1 hereof;
- (d) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;
- (e) Any representation or warranty made by the Lessee herein or in the Participation Agreement, except those representations and warranties set forth in Section 20(c) hereof, or the Purchase Order Assignment or in any statement or certificate furnished to the Lessor, the Note Purchaser or the Security Trustee pursuant to or in connection with this Lease, the Participation Agreement or the Purchase Order Assignment is untrue in any material respect as of the date of issuance or making thereof;
- (f) Any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under

any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(g) A petition for reorganization under the Bankruptcy Reform Act of 1978, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by such trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier.

14.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor or, in the event this Lease shall be assigned to an assignee pursuant to Section 16 hereof, such assignee, at its option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees; and/or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of a 6% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess of any of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over

the amount the Lessor reasonably estimates to be the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

For purposes of Section 14.2 above, the Fair Market Value or, as the case may be the Fair Rental Value for any Item of Equipment shall be determined in the appraisal arrangements specified in Section 18.4 hereof; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

14.3. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14.5. Notice of Event of Default. The Lessee also agrees to furnish to the Lessor, the Note Purchaser and the Security Trustee, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

- (a) Forthwith remove such Equipment from any unit of railroad rolling stock to which such Equipment is attached and place such Equipment in such reasonable storage place on the Lessee's

lines of railroad as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's lines of railroad without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Lessor and during such period of storage the Lessee shall continue to maintain the insurance required by Section 11.1 hereof; and

(c) Transport the Equipment to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may direct in writing.

All amounts earned in respect of the Equipment after the date of termination of this Lease, but not exceeding the rental, per diem, or other similar charge for equipment received therefor, shall belong to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such assignee. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the termination of this Lease, the Lessee shall, in addition, pay to the Lessor or, in the case of such assignment, to such assignee for each day thereafter an amount equal to .035736% of the Purchase Price of such Item of Equipment.

15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to

exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to the Lessor pursuant to Sections 6, 10.2, 11.1 [with respect to public liability insurance], 20 and 21.2 hereof which shall remain enforceable by the Lessor), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee and the Lessor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Equipment. So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2. Use and Possession on Lines Other Than Lessee's Own. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation, a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or such corporation has trackage or other operating rights or over which equipment of the Lessee is regularly operated pursuant to contract and also to permit the use of any Item of Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease. Notwithstanding the foregoing, the Lessee shall at no time throughout the term of this Lease assign or permit the assignment of any Item of Equipment to service (including, without limitation, the regular operation or maintenance thereof) outside the continental United States. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligation hereunder which shall be and remain those of a principal and not a surety.

17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignees, successors or transferees shall have duly assumed the obligations of the Lessee hereunder and that they will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of Properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 18. RENEWAL OPTIONS AND RIGHT OF FIRST REFUSAL.

18.1. Renewal Options. Provided that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for for up to three consecutive renewal terms of one year each upon and subject to the terms and conditions herein contained for the original term of this Lease; provided that the Fixed Rental payable for and during such renewal terms shall be an amount equal to 55% of the average Fixed Rental per unit provided in Section 2.1 hereof, payable semiannually in arrears, and the Casualty Value payable during any such renewal term shall be equal to the amount set forth in Schedule C hereto. Such renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election 180 days prior to commencement of such renewal term.

18.2. Right of First Refusal. Unless an Event of Default, or any event or condition which, upon notice or lapse of time, would constitute an Event of Default, shall have occurred and be continuing, the Lessor shall not, at any time within 90 days after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.1 hereof, after the end of any such renewal term) sell, transfer or otherwise dispose of any Item of Equipment unless:

(a) the Lessor shall have received from a responsible purchaser or purchasers a bona fide offer or offers in writing to purchase any of the Items of Equipment;

(b) the Lessor shall have given the Lessee notice (i) setting forth in detail the identity of such purchaser or purchasers, the proposed purchase price or prices, the proposed date of purchase and all other material terms and conditions of such purchase, including, without limitation, any arrangements for the financing of such purchase known to the Lessor, and (ii) offering to sell such Items of Equipment to the Lessee upon the same terms and conditions as those set forth in such notice; and

(c) the Lessee shall not have notified the Lessor, within 15 days following receipt of such notice, of its election to purchase such Items of Equipment upon such terms and conditions.

If the Lessee shall not have so elected to purchase such Items of Equipment, the Lessor may sell such Items of Equipment at a price and upon other terms and conditions no less favorable to the Lessor than those specified in such notice. Upon the expiration of 90 days after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.1 hereof, after the end of any such renewal term) all rights of the Lessee to exercise a right of first refusal pursuant to this Section shall terminate.

18.3. Delivery of Equipment. Unless the Lessee has elected to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

18.4. Determination of Fair Market Value or Fair Rental Value. If on or before 90 days prior to the expiration of any term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value or the Fair Market Value, as the case may be, of the Items of Equipment, such value shall be determined in accordance with the foregoing definitions, respectively, by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 15 days after such notice is given, each party shall appoint an independent appraiser within 20 days after such notice is given, and the two appraisers so appointed shall

within 25 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 25 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine such value of the Items of Equipment within 60 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of such value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as such value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining the Fair Rental Value and/or Fair Market Value, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNT PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding any nonpayment of rent due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 12.50% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. INCOME TAX INDEMNIFICATION.

(a) *Intended Federal and Minnesota State Tax Benefits.* In entering into this Lease and the transaction contemplated thereby, it is the intention of the Lessor that such transaction will result in making available to the Lessor the following tax benefits (the "Tax Benefits") for the purpose of determining its liability for Federal, and to the extent applicable, its Minnesota State, income tax:

- (1) This Lease constitutes a lease;
- (2) The Lessor is the lessor and the Lessee is the lessee under this Lease;
- (3) The Lessor will be entitled to deduct the interest (the "Interest Deduction") payable on the Notes in computing its taxable income;
- (4) The entire Purchase Price of the Items of Equipment will qualify for the full 10% investment tax credit (the "Investment Tax Credit") allowed under Section 38 and related sections of the Internal Revenue Code of 1954, as amended (the "Code");
- (5) The Lessor will be entitled to depreciate each Item of Equipment over an "asset depreciation range" of 12 years, utilizing the double declining balance method switching to sum of the years digits method as provided in Section 167(b) and (e) of the Code at the time when most beneficial to the Lessor (the "Depreciation Deduction"); and
- (6) All amounts includible in gross income by the Lessor with respect to this Lease will be treated as income derived from or allocable to sources within the United States.

(b) *Actions of Lessee.* The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time during the term of this Lease or any extended term thereof take any action or fail to take any action or file any returns, certificates or other documents inconsistent with the foregoing contemplated Tax Benefits,

except that the Lessee may take such action as may be deemed by the Lessee to be necessary in consequence of, and file returns in connection with, the de minimis use of the Items outside the United States and that each of such corporations will file such returns, take such action and execute such documents, and keep and, upon receipt of 15 days' written notice from the Lessor, make available for inspection and copying by the Lessor such records (other than the Lessee's corporate income tax returns) as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

(c) *Representations and Warranties by Lessee.* The Lessee represents and warrants that (i) no portion of the Items constitutes property, the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Items, the Items will qualify as "new Section 38 property" within the meaning of Section 48(b) of the Code; (iii) at the time the Lessor becomes the owner of the Items, the Items will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iv) at the time the Lessor becomes the owner of the Items, no investment credit, depreciation or other tax benefits will have been claimed by any person with respect thereto; (v) at all times during the term of this Lease, the Items will constitute "Section 38 property" within the meaning of Section 48(a) of the Code in effect on the date the Equipment is placed in service; and (vi) the use of the Equipment outside the continental United States shall be de minimis and the Lessee will maintain sufficient records to verify such use which records will be furnished to the Lessor for Federal income tax audit purposes only within 15 days after receipt of written demand therefor.

(d) *Federal and Minnesota State Income Tax Indemnification.* If the Lessor shall incur a loss of all or any portion of the Tax Benefits with respect to any Item due to (1) the sale or other disposition of any Item or the interest of the Lessor therein after the occurrence of any Event of Default under this Lease, (2) the incorrectness of any representation or warranty made by the Lessee in Section 20(c) above or in any Operative Agreement or in any certificate delivered in connection therewith or the breach by the Lessee of any of its agreements set forth in Section 20(b) above, or (3) the use of any Item by the Lessee outside the continental United States or otherwise in a manner inconsistent with the Lessor's claim to any of the Tax Benefits, then in any such case the Lessee shall pay to the Lessor on each of the dates provided in this Lease for payment of the installments of Fixed Rental hereunder commencing with the first such date following the date on which the liability of the Lessee hereunder shall become fixed as hereinafter provided, such sums which (after deduction of all income taxes required to be paid by the Lessor on the payment of such sums under the laws of the United States or any political subdivision thereof), when taken together with the portion of the Fixed Rental installments due on such dates under this Lease which are to be distributed to the Lessor, will, in the reasonable opinion of the Lessor, maintain the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Item hereunder and under the Lease at the same level that would have been available if such Lessor had been entitled to utilization of all of the Tax Benefits. Except with respect to a termination in connection with a casualty occurrence for which the casualty value is increased pursuant to the last sentence of the next succeeding paragraph, if this Lease is terminated with respect to any Item prior to the time the Lessee is obligated to make payments to the Lessor as set forth in the preceding sentence (either because no such payment obligation had become fixed under such sentence prior to such termination or because the due date of such payment or payments shall occur following such termination), then the Lessee shall pay to the Lessor, in lieu of such payment or payments, on or before 30 days after the liability of the Lessee in respect of such termination hereunder shall become fixed as in this Lease and hereinafter provided, such lump sum (calculated in the same manner as set forth in the preceding sentence) as shall be necessary in the reasonable opinion of the Lessor to maintain the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Item hereunder and under this Lease at the same level that would have been available if the Lessor had been entitled to utilization of all of the Tax Benefits. The amount of any

payment of indemnity hereunder shall reflect (i) the amount of interest, additions to tax and penalties payable by the Lessor in respect of any such loss and (ii) the amount of Federal, state and local taxes on, or measured by net income, interest, additions to tax and penalties incurred by the Lessor as a result of the receipt of such indemnity payment.

The Lessee acknowledges that the Schedules of Casualty Value attached as Schedule C to this Lease have been computed on the assumption that the Lessor shall be entitled to the Tax Benefits. Accordingly, in the event the Lessee becomes obligated under the provisions of this Agreement to pay additional sums to the Lessor pursuant to this Section 20(d), the said Schedules of Casualty Value shall be revised as may be necessary in the reasonable opinion of the Lessor so that the amount payable by the Lessee in connection with any Casualty Occurrence shall be sufficient to maintain the Lessor's after-tax economic accounting yields and cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) at the same level that would have been available to the Lessor upon payment of Casualty Value had the Tax Benefits been allowed in full; *provided*, that the Casualty Values under this Lease shall in no event be reduced below amounts required (when taken together with rentals then payable) to discharge the Notes and interest accrued thereon to the date on which any Casualty Value shall be due and payable under this Lease. The revised Schedules of Casualty Value shall be applied to any payment of Casualty Value paid after the liability of the Lessee hereunder shall become fixed as hereinafter provided regardless of the date of the Casualty Occurrence. Furthermore, with respect to any previous payment of Casualty Value under the Lease by the Lessee, the Lessee shall pay to the Lessor, in a lump sum, the additional amount, in excess of the Casualty Value actually paid, that the Lessee would have been required to pay had the liability of the Lessee hereunder become fixed prior to the date of the original payment, and the Schedules of Casualty Value had, accordingly, been revised as above provided.

Anything in the first paragraph of this Section 20(d) to the contrary notwithstanding, the Lessee shall not be required to make any payment to the Lessor provided for herein if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of the Tax Benefits with respect to all or part of such Item to which it would otherwise have been entitled if such Tax Benefits would have been lost because one or more of the following events has occurred (hereinafter called "Excluded Events"):

- (i) a Casualty Occurrence with respect to such Item, if the Lessee shall have paid to the Lessor the amounts stipulated under Section 11 of this Lease;

- (ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Item (except pursuant to any assignment thereof to the Security Trustee as security) or the voluntary reduction by the Lessor of its interest in the rentals from such Item under this Lease (except pursuant to any assignment thereof to the Security Trustee as security) or any transfer or disposition by the Lessor resulting from bankruptcy or other proceedings for the relief of debtors in which the Lessor is the debtor (whether voluntary or involuntary) of any interest in such Item or in the rentals therefor under the Lease unless, in each case, an Event of Default under this Lease shall have occurred and be continuing;

- (iii) the failure of the Lessor to timely claim the Investment Credit, the Depreciation Deduction or the Interest Deduction, as applicable, in its Federal income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the Tax Benefits;

- (iv) the failure of the Lessor to have sufficient liability for tax against which to credit such Investment Credit or sufficient income to benefit from the Depreciation Deduction or the Interest Deduction, as applicable; and

- (v) the occurrence of a change in the Federal or Minnesota tax law which is not enacted and effective prior to the First Delivery Date.

It is understood that the indemnities, representations and warranties contained in this Section 20 shall survive the termination of this lease and the operative agreements.

(e) *Contesting Loss of Tax Benefits.* If Lessor shall lose, shall not have or shall lose the right to claim or there shall be disallowed or recaptured with respect to the Lessor, any or all of the Tax Benefits with respect to any Item, Lessor shall notify Lessee of such loss and shall furnish to the Lessee a statement describing such loss in reasonable detail. If within 14 days after receipt of such statement, Lessee's inhouse tax counsel furnishes Lessor with a written opinion that there exists a bona fide claim to all or a portion of the Tax Benefits with respect to any Item in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, contest such matter in such forum as the Lessor in its sole judgment shall select; provided, however, that the Lessor shall not be obligated to take any such legal or other appropriate action unless, at Lessor's request, Lessee has obtained a written opinion from independent tax counsel ("Special Tax Counsel") selected by Lessee and approved by the Lessor that there is a meritorious basis for contesting such loss which opinion must be obtained within 14 days after receipt of such request from Lessor and the Lessee shall first have indemnified the Lessor for all liabilities and expenses (including, without limitation, the Lessor's attorneys' fees in connection therewith) which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The Lessor may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to the Lessor of all or any portion of the Tax Benefits with respect to any Item (a "Tax Payment") or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such sums payable hereunder need not be paid by the Lessee while such action is pending; *provided*, that the Lessee shall pay the liabilities and expenses relating to such action when and as the same shall become due. In such cases, if the Final Determination (as such term is defined in the next succeeding paragraph hereof) shall be adverse to the Lessor, the sums payable hereunder shall be computed by the Lessor as of the date of such Final Determination and the Lessee shall commence payment of the increased rentals on the rental payment date under this Lease next succeeding such Final Determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as an additional payment hereunder an amount equal to all interest and penalty (plus an amount sufficient to pay the income tax resulting from the reimbursement of such interest and penalty) paid by the Lessor in respect of such Final Determination, together with interest thereon from the date such payment is made by the Lessor to the date the Lessee reimburses the Lessor thereof at the rate of interest charged by Crocker National Bank to its prime commercial customers on short-term unsecured borrowings (the "Prime Rate") in effect on the date of such Final Determination. If the Lessor makes such Tax Payment prior to contesting the matter and then either sues for a refund or does not contest such tax payment because the Lessee has not requested the Lessor to do so in accordance with the terms of this paragraph, the sums payable hereunder shall commence to be payable by the Lessee on the first rental payment date under this Lease after such Tax Payment is made and, on or before such rental payment date, the Lessee shall pay to the Lessor as an additional payment hereunder an amount equal to all interest and penalty (plus an amount sufficient to pay the income tax resulting from the reimbursement of such interest and penalty) paid by the Lessor included in such Tax Payment. If the Lessor sues for a refund after making such Tax Payment, and if the Final Determination shall be in favor of the Lessor, no future payments shall be due hereunder in respect of such matter (or an appropriate reduction shall be made if the Final Determination is partly in favor of and partly adverse to the Lessor). In addition, the Lessee and the Lessor shall adjust their accounts so that (a) the Lessor pays to the Lessee (x) an amount equal to the sums theretofore paid by the Lessee to the Lessor (or a proportionate part thereof if the Final Determination is partly adverse to the Lessor) on or before such next succeeding rental payment date together with interest thereon at the interest rate then being paid on tax overpayments by the United States for the period such sums were paid to the Lessor to the date the Lessor pays to the Lessee an amount equal to such sums, and (y) the amount of any penalty or

interest refunded to the Lessor as a result of such Final Determination and any interest paid to the Lessor by the Government on such refund, promptly upon receipt thereof, and (b) the Lessee pays to the Lessor an amount equal to interest at the Prime Rate on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by the Lessor to the date such tax refund is received by the Lessor, such Prime Rate to be calculated in either case as from time to time in effect during the respective periods.

"Final Determination" for the purpose of this Agreement, means a final decision of a court of competent jurisdiction after all allowable appeals (other than an appeal or petition for certiorari to the Supreme Court of the United States) provided, however, that the Owner shall have no obligation to appeal any decision unless within 14 days after the Lessor notifies the Lessee of its intent not to appeal, the Lessor receives from Lessee, at Lessee's expense, a written opinion from Special Tax Counsel that their opinion is that there is a meritorious basis for appealing such decision. Pursuant thereto, the Lessor shall, upon request and at the expense of Lessee, appeal such decision. The Lessor shall determine any appellate court. The Lessor agrees that it shall not enter a settlement or other compromise with respect to any loss of all or any portion of the Tax Benefits without the prior written consent of Lessee (which consent shall not be unreasonably withheld) unless the Lessor shall waive its right to be indemnified with respect to any such loss under this Section 20.

(f) *Payment Adjustment for Lessee's Capital Expenditures.* In the event that the Lessee shall be required pursuant to Section 7 of the Lease to make any non-readily removable improvement and/or addition to any Item of Equipment at its own expense (any such improvement and/or addition being hereinafter called the "Alterations") and the cost thereof is in the reasonable opinion of the Lessor deemed to be included in the gross income of the Lessor for Federal income tax purposes, the Lessee hereby agrees that it will pay to the Lessor on each of the dates provided in this Lease for payment of the installments of rental thereunder in respect of such Item commencing with the first such date following the date on which the Lessee is required to furnish written notice of such inclusion to the Lessor pursuant to the final sentence of Section 7 of the Lease. Such sums shall (after deduction of all taxes required to be paid by the Lessor with respect to the receipt thereof under the laws of the United States or any political subdivision thereof), when taken together with the rental installments due on such dates under this Lease in respect of such Item, will, in the reasonable opinion of the Lessor, maintain the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Item hereunder and under the Lease at the same level that would have been available if the cost of such Alterations had not been treated as income to the Lessor.

(g) *Consolidated Tax Returns.* For purposes of this Agreement, the term "Lessor" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

SECTION 21. MISCELLANEOUS.

21.1. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class, postage prepaid, addressed as follows:

If to the Lessor:	Cargill Leasing Corporation Box 9300 Minneapolis, Minnesota 55440 Attention: Executive Vice President
-------------------	--

If to the Note Purchaser:	At the address provided in Schedule 1 to the Participation Agreement
---------------------------	--

If to the Lessee:

Burlington Northern Inc.
176 East Fifth Street
St. Paul, Minnesota 55101
Attention: Vice President and Treasurer

or addressed to any such party at such other address as such party shall hereafter furnish to such other parties in writing.

21.2. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at the rate of 12.50% per annum.

21.3. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

21.4. Law Governing. This Lease shall be construed in accordance with the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

21.5. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

21.6. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

CARGILL LEASING CORPORATION

By Hugh B. Guill
Its Hugh B. Guill, Executive Vice President

[CORPORATE SEAL]

ATTEST:

Robert M. Olson
Robert M. Olson, Assistant Secretary
Secretary

BURLINGTON NORTHERN INC.

By R.C. Sauter
Vice President and Treasurer

[CORPORATE SEAL]

ATTEST:

Assistant Secretary
Assistant Secretary

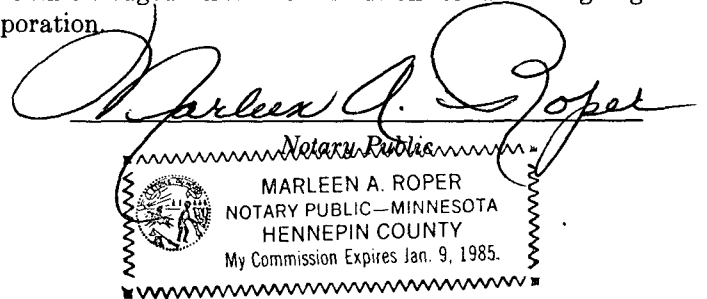
This Lease and certain of the sums due and to become due hereunder have been assigned to, and are subject to a security interest in favor of, Mercantile-Safe Deposit and Trust Company, as Security Trustee, pursuant to a Security Agreement-Trust Deed dated as of January 15, 1980 from Cargill Leasing Corporation to said Security Trustee. Information concerning such security interest may be obtained from said Security Trustee at its principal office at Two Hopkins Plaza, Baltimore, Maryland 21203, Attention: Corporate Trust Department.

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } SS

On this 21st day of January, 1980, before me personally appeared Hugh B. Duell, to me personally known, who being by me duly sworn, says that he is the Exec. Vice Pres. of CARGILL LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

My commission expires:

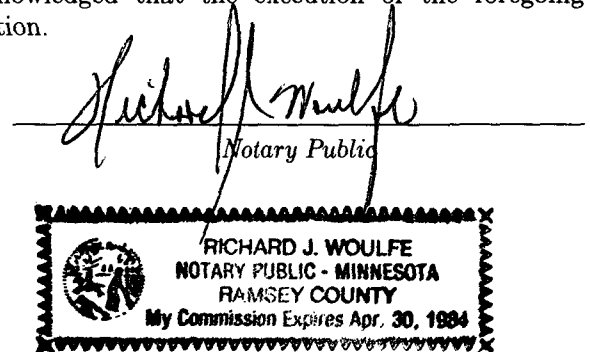


STATE OF MINNESOTA }
COUNTY OF RAMSEY } SS

On this 21st day of January, 1980, before me personally appeared R. C. Burton, Jr., to me personally known, who being by me duly sworn, says that he is the Vice President and Treasurer of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

My commission expires:



DESCRIPTION OF ITEMS OF EQUIPMENT

Manufacturer of Equipment:	Portec, Inc.
Description and Mark and Number of Items of Equipment:	Type A: 109 semi-enclosed, bi-level auto racks without roof or end doors, which shall bear Lessee's rack identifying numbers BN 7072 through BN 7180, both inclusive. Type B: 41 enclosed tri-level auto racks without end doors, which shall bear Lessee's rack identify- ing numbers BN 4836 through BN 4876, both inclusive.
Base Purchase Price of Equipment:	Type A: \$27,000 per Item Type B: \$39,000 per Item
Maximum Aggregate Purchase Price of Equipment:	\$4,996,200
Place of Delivery:	Novi, Michigan
Outside Delivery Date:	December 31, 1980

(Burlington Northern No. 80-1)

SCHEDULE A
(to Equipment Lease)

**CERTIFICATE OF ACCEPTANCE
UNDER EQUIPMENT LEASE**

To: CARGILL LEASING CORPORATION
(the "Lessor")

PORTEC, INC.
(the "Manufacturer")

I, a duly appointed and authorized representative of BURLINGTON NORTHERN INC. (the "Lessee") under the Equipment Lease dated as of January 15, 1980 between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and appear to conform to the specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased and Subject to a Security Interest Recorded with the I.C.C."

I do further certify that the following schedule sets forth the Lessee rack number of each of the foregoing Items of Equipment and identifies the railroad car to which such Item is attached:

Lessee Rack
Number

Mark and Number of
Railroad Car to which
such Item is Attached

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer for any warranties it has made with respect to the Equipment.

Dated: , 1980

*Inspector and Authorized
Representative of the Lessee*

(Burlington Northern No. 80-1)

**SCHEDULE B
(to Equipment Lease)**

SCHEDULE OF CASUALTY VALUE

The Casualty Value for an Item of Equipment payable on the Term Lease Commencement Date or any Fixed Rental payment date thereafter shall mean an amount equal to the percent of the Purchase Price of such Item set forth opposite such date in the following schedule (as the same may be increased pursuant to Annex 1 to this Schedule C):

<u>Term Lease Commencement Date or Fixed Rental Payment Date on which Casualty Value is Paid</u>	<u>Percentage of Purchase Price Payable as Casualty Value</u>
Term Lease Commencement Date	90.98857%
July 3, 1981	90.36968
January 3, 1982	88.47424
July 3, 1982	87.00649
January 3, 1983	84.90528
July 3, 1983	82.71658
January 3, 1984	80.52428
July 3, 1984	77.94701
January 3, 1985	75.14251
July 3, 1985	71.85852
January 3, 1986	68.91416
July 3, 1986	65.33679
January 3, 1987	61.73549
July 3, 1987	57.54595
January 3, 1988	53.76860
July 3, 1988	49.39207
January 3, 1989	44.91891
July 3, 1989	43.03888
January 3, 1990	35.21513
July 3, 1990	32.86521
January 3, 1991	30.63862
July 3, 1991	28.02369
January 3, 1992	25.55339
July 3, 1992	22.72882
January 3, 1993 and thereafter	20.00000

(Burlington Northern No. 80-1)

SCHEDULE C
(to Equipment Lease)

ANNEX 1 TO SCHEDULE C
(to Equipment Lease)

The percentages set forth in Schedule C have been computed without regard to recapture of the Investment Credit provided for in Section 38 and related sections of the Internal Revenue Code of 1954, as amended. Consequently, the Casualty Value of any Item of Equipment suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of such Item shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third	18.51852
Fifth.....	12.34569
Seventh	6.17283